



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 28, 2004

Ms. Laura C. Rodriguez
Walsh, Anderson, Brown, Schulze & Aldridge
P.O. Box 2156
Austin, Texas 78768

OR2004-4424

Dear Mr. Rodriguez:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 202553.

The Gregory-Portland Independent School District (the "district"), which you represent, received a request for the letters of reference relating to the requestor's application for employment with the district. You claim that the requested information is excepted from disclosure under section 552.111 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

At the outset, we address the district's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. You inform us that the district received the present request for information on March 5, 2004. The district did not request a decision from this office until March 26, 2004. You do not inform us that the district was closed for any of the business days between March 5, 2004 and March 26, 2004. Consequently, the district failed to request a decision within the ten-business-day period mandated by section 552.301(b) of the Government Code. Because the district failed to comply with section 552.301, the requested information is presumed to be public information. *See Gov't Code § 552.302.*

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex.

App.—Austin 1990, no writ); *see* Open Records Decision No. 630 (1994). The district claims that the information is excepted from public disclosure pursuant to section 552.111 of the Government Code and the reasoning set forth in Open Records Decision Nos. 565 (1990) and 466 (1987). These decisions concluded that employment references and employee evaluations are excepted under section 552.111. Our office has previously concluded that section 552.111 is a discretionary exception. A governmental body thus waives this exception by failing to timely invoke it. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 470 (1987) (statutory predecessor to section 552.111 is discretionary exception).¹ As you have raised no other exceptions to disclosure and the information is not otherwise confidential by law, we conclude that the information must be released to the requestor.²

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public

¹Please note that the section 552.111 conclusions reached in Open Records Decision Nos. 565 and 466 have been overruled to the extent they conflict with Open Records Decision No. 615 (1993) (agency's policymaking functions do not encompass internal administrative or personnel matters).

²The information includes a social security number. Generally, a social security number is excepted from required public disclosure under section 552.101 of the Government Code in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). Here, however, the requestor has a special right of access to her own social security number. Gov't Code § 552.023. If the district receives a future request for this information from an individual other than the requestor or her authorized representative, the district should again seek our decision.

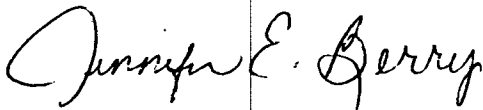
records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer E. Berry
Assistant Attorney General
Open Records Division

JEB/sdk

Ref: ID# 202553

Enc: Submitted documents

c: Ms. Martha Rose
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(w/o enclosures)